

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JOHN WHITE,

Plaintiff,

v.

Case No. 13-cv-646-JPG-PMF

ALLAN MARTIN, SCOTT RHINE, KAREN
JAIMET, S.A. GODINEZ, ED ORTEGA,
HARRY ALLARD, JACKIE MILLER,
DONALD ENLOE, STEVE LOPEZ and
TROY HENDRIX,

Defendants.

MEMORANDUM AND ORDER

This matter comes before the Court on the Report and Recommendation (“Report”) (Doc. 90) of Magistrate Judge Philip M. Frazier recommending that the Court grant the defendants’ motions to dismiss based on *Heck v. Humphrey*, 512 U.S. 477 (1994), in light of plaintiff John White’s prayer for monetary damages for his excessive incarceration (Docs. 78 & 84). White has not objected to the Report but has asked the Court to allow him to remove the prayer for damages that brings him within the scope of *Heck* (Doc. 91). The defendants have responded to this request (Doc. 93).

The Court may accept, reject or modify, in whole or in part, the findings or recommendations of the magistrate judge in a report and recommendation. Fed. R. Civ. P. 72(b)(3). The Court must review *de novo* the portions of the report to which objections are made. *Id.* “If no objection or only partial objection is made, the district court judge reviews those unobjected portions for clear error.” *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999).

The Court has received no objection to the Report. The Court has reviewed the entire file

and finds that the Report is not clearly erroneous. Accordingly, the Court will adopt the Report and will dismiss White's Third Amended Complaint but will allow him an opportunity to amend his pleading only to change his prayer for relief to one for non-monetary damages other than a request for release or other change to the duration of his confinement. His amended pleading shall not contain any other substantive amendment.

For these reasons, the Court:

- **ADOPTS** the Report in its entirety (Doc. 90);
- **GRANTS** the defendants' motions to dismiss (Docs. 78 & 84);
- **DISMISSES without prejudice** White's Third Amended Complaint (Doc. 74);
- **GRANTS** White's motion for removal of his prayer for monetary damages, which is construed as a motion for leave to amend his pleading (Doc. 91);
- **ORDERS** that White shall have up to and including October 30, 2015, to submit a Fourth Amended Complaint that complies with Local Rule 15.1 and this order;
- **WARNS** White that should he not submit a proper proposed Fourth Amended Complaint in a timely manner, the Court may direct entry of judgment of dismissal without prejudice and close this case without further warning;
- **REFERS** this action to Magistrate Judge Frazier
 - for further pre-trial proceedings pursuant to Local Rule 72.1(a)(2) and
 - for disposition pursuant to Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c) *if all parties consent to such a referral.*

IT IS SO ORDERED.

DATED: October 1, 2015

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE